



GUIDELINES FOR ADMINISTRATION OF DECEDENTS' ESTATES

**The Probate Courts of Connecticut
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Notes: 1)As used in this booklet, words referring to the masculine gender may be applied to females, and words referring to the feminine gender may be applied to males. 2) A number of estate applications and other estate-related probate forms are available online at the Judicial Branch's website, www.jud.state.ct.us (click on "Court Forms" under Tools for Practice"). Forms are also available at the probate court.

INTRODUCTION

The responsibility for settling the affairs of a decedent often falls upon a family member or friend. We have prepared this booklet to answer some questions about probate court procedures that are often asked during the settlement of a decedent's estate.

Since many of the estates handled in the probate courts deal with complex statutes and tax laws, it is important for each person to seek competent professional advice when faced with these problems. This booklet should not be considered as a substitute for that advice but rather as a guide to the fiduciary's responsibilities.

WHY DO PROBATE COURTS BECOME INVOLVED IN THE SETTLING OF DECEDENTS' ESTATES?

When a person who owns property dies, the Probate Court becomes involved to oversee the division of his property among those legally entitled to it. This division of property will be carried out according to the person's wishes if he had made them known by executing a will. If the person, referred to as a "decedent," left no will, the property will be divided according to certain laws known as the laws of "intestacy." In addition to overseeing the distribution of the estate, the Probate Court will ensure that any debts of the decedent, funeral expenses, and taxes are paid prior to distributing the remaining assets of the estate.

HOW DO PROBATE COURTS BECOME INVOLVED IN THE SETTLING OF DECEDENTS' ESTATES?

A decedent who left a will is known as a "testator." Within 30 days of the testator's death, the will must be brought to the probate court in the district in which he or she had last permanently resided. This is usually the responsibility of the "executor," a person named in the testator's will to carry out the terms of the will. Any other person who has knowledge of, or possession of, a will for the testator must deliver the will either to the executor or to the probate court within 30 days of the testator's death. There is a criminal penalty for failure to do so.

In addition to a will, there may be additions or amendments to the will that are known as "codicils." A codicil is the only legal document that can add to, delete, or modify provisions of a will. Any codicils must also be delivered to the probate court within 30 days of the testator's death. Before the provisions of a will are carried out, the will must be "probated" or "proved" in the probate court in a proceeding to determine the will's validity as a legal document. The Court approves the appointment of the executor named in the will as part of this process.

In the case of a person who dies "intestate," having left no will, an application for appointment of an administrator to handle the decedent's affairs and property must be filed in the probate court in the district in which the decedent had her permanent residence at the time of death. This is usually done by the decedent's surviving spouse, an adult child, or other relative. The Court will appoint an administrator who will have the same duties as an executor named in a will. The law favors the appointment of close relatives, such as the spouse or a child. Both the administrator and the executor are referred to as the "fiduciary," a term used to denote a person (or persons) who holds a position of trust involving the handling of the property of another.

WHAT ARE THE RESPONSIBILITIES OF A FIDUCIARY IN THE HANDLING OF A DECEDENT'S ESTATE?

The fiduciary's responsibilities in the handling of a decedent's estate include managing all transactions in a careful manner, ensuring the preservation of the estate's assets, and expediting the final settlement of the estate. The fiduciary is expected to be fair and impartial in all dealings with creditors and beneficiaries. The fiduciary has

the responsibility for filing all necessary documents in connection with the administration of the estate in the probate court. A step-by-step list of responsibilities is contained within this pamphlet.

WHEN SHOULD A FIDUCIARY SEEK PROFESSIONAL ASSISTANCE?

While the Probate Court may assist a fiduciary in administering an estate, it is often advisable for the fiduciary to engage professional assistance. For example, professional assistance may be necessary when the estate to be managed involves substantial or unusual assets or if the estate is large enough to involve the filing of a Federal Estate Tax Return. Forms that need to be filed in the probate court are available from the court, and instructions for their completion are often included on the forms.

IS THERE A SIMPLIFIED PROCEDURE FOR SETTLING SMALL ESTATES WITH LIMITED TYPES OF ASSETS?

A simplified procedure for settling the estate may be available if the total value of the estate assets does not exceed \$20,000. In addition, at the time of death the decedent must not own any real estate other than survivorship property, and the estate assets must consist only of personal property and/or an unreleased interest in a mortgage with or without value. This simplified procedure may be used even though survivorship property passed to a survivor as a result of the death of the decedent.

In such a case it is not usually necessary to apply for the appointment of an administrator or admission of the will for probate. If the claims against the estate equal or exceed the assets, no distribution will be necessary. In the event that there are excess assets after the payment of debts and expenses, and either no will is found or the will's terms are not inconsistent with the laws of intestate succession, then the Court shall order distribution in accordance with the laws of intestacy without admitting the will to probate.

If, however, there is a will that provides for a distribution that is not consistent with the laws of intestate succession, then the Court shall order a distribution in accordance with the terms of the will only if the decedent's heirs-at-law sign a written waiver of their right to contest the will. In the alternative, the Court will order a distribution in accordance with the laws of intestacy if the beneficiaries named in the will consent in writing to such a distribution. If neither the heirs sign a waiver of their rights, nor the beneficiaries consent to an intestate distribution, the small estates procedure will not be available to settle the estate, and the will must be offered for probate.

When the small estates procedure is appropriate, the decedent's spouse, if any, or if none, any of the decedent's next of kin, or if there is no next of kin or if the surviving spouse or next of kin refuses, then any suitable person whom the Court deems to have sufficient interest may file an affidavit with the probate court certifying to the payment of all the decedent's debts, at least to the extent of the fair market value of all of the assets, and submit the will for filing only. The affidavit must also state whether or not the decedent had been receiving aid or care from the state. In addition to the affidavit, a Connecticut Succession Tax Return (Form S-1 or S-2) must be filed, and a succession tax may be due.

The steps given below in bold print outline the major responsibilities of the fiduciary in settling a decedent's estate and include time limitations in which to carry out the function. The narrative following each step provides a more comprehensive description of the process, including the responsibilities of all parties involved. It should be noted that this outline of steps is not designed to be all-inclusive for every situation. There may be additional responsibilities for fiduciaries of certain estates, depending on individual circumstances.

STEP 1: FILE WILL AND APPLICATION FOR PROBATE OF WILL OR APPOINTMENT OF ADMINISTRATOR, PC-200, WITHIN THIRTY DAYS OF DECEDENT'S DEATH.

An application for administration or probate of will and the will (if there is one) are submitted to the probate court within 30 days of the decedent's death. The application must contain the names and addresses of all heirs (the decedent's closest relatives) and beneficiaries (those parties who would inherit under the will). A copy of the decedent's death certificate may be required by the Court. There are two options for the probate court hearing:

1. If all those entitled to notice waive their right to notice or do not request a formal hearing, **and** the Court does not believe a hearing is necessary, then the Court will enter a decree on the decree entry date without a formal hearing and without the parties being present.
2. If the matter is contested, if any interested party requests a formal hearing, or if the Court determines that a formal hearing is necessary, the Court will schedule a formal hearing. All parties will receive notice of the hearing.

If the will is determined to be valid, the executor named therein is normally appointed. In an intestate estate, an administrator is appointed. Any executor or administrator may be removed from this position by the Court for cause shown. The Court will appoint a guardian ad litem to protect the interest of any heir or beneficiary who is a minor or incompetent. If the will excuses bond, no bond will be required of the executor unless the Probate Court decides that there is sufficient reason to require one. All administrators must be bonded, with the amount being established by the Court. **Please note the following exception to these bonding requirements.** A probate judge may waive the requirement of a probate bond in a testate or intestate estate if the assets of the estate are less than \$20,000, or if the amount of the estate that is not restricted by Probate Court order is less than \$10,000.

STEP 2: TAKE POSSESSION OF DECEDENT'S PROPERTY.

The first responsibility of the fiduciary, following appointment by the Court, is to gather together the assets of the estate and place them under his control. For example, a bank account should be transferred from the decedent's name into an estate account. Stock certificates need not be registered in the name of the estate, although the transfer agents should be notified to send dividends in care of the fiduciary. Utility companies that have billed the decedent need to be notified of the decedent's death, and accounts to remain open should be transferred to the estate's account. The fiduciary must take care to keep the estate's income and expenses separate from his own. Any dwellings, seasonal homes, etc. should be secured and protected from the elements.

STEP 3: IF DECEDENT OWNED REAL ESTATE, FILE CERTIFICATE OF NOTICE FOR LAND RECORDS, PC-251, WITHIN TWO MONTHS OF APPOINTMENT OF FIDUCIARY.

A Certificate of Notice for Land Records must be filed with the town clerk in each town in Connecticut where real estate belonging to the decedent is located.

STEP 4: FILE INVENTORY, PC-440, WITHIN TWO MONTHS OF APPOINTMENT AS FIDUCIARY.

The fiduciary must file an inventory of the estate with the probate court within two months of appointment as fiduciary. In general, the inventory should list only property the decedent owned in her own name. However, it should also list life insurance policies payable to the decedent's estate, any partnership property, and any property owned with other persons not in survivorship. All property must be valued on the inventory at its fair market value at the time of death. It is the responsibility of the fiduciary to determine these values through inquiry and her own experience. Real estate should be described as it appears in the most recent deed, and a copy of the deed may be attached to the inventory. The amount of any mortgage(s) owed on real estate and the name of the person or

corporation to whom the debt is owed must be included. Itemized lists of valuable personal property such as jewelry and antiques should also be included. Ordinarily, household effects and personal items need not be itemized, unless of particular value. They can be grouped together in categories unless an article is specifically bequeathed in the will.

STEP 5: OBTAIN CASH AS NEEDED FOR ESTATE ADMINISTRATION.

The fiduciary should anticipate the cash needs of the estate to pay for administration expenses, taxes, claims, and bequests. He or she has the authority to convert into cash any personal property not specifically bequeathed but must obtain permission from the Probate Court to sell, mortgage, or otherwise convey real estate, unless specifically authorized to do so under the terms of the will. When personal property is to be sold, the fiduciary (if the fiduciary is not named in the will as executor or is not a family member) must send a copy of the inventory to all interested parties, with a notice of intent to sell. They then have the right to object to the sale within five (5) days of the receipt of the notice. (The Court may waive this requirement if an expeditious sale is necessary.) A hearing will be held to determine the advisability of the requested sale. If parties interested in the estate do not want certain assets sold, cash may be advanced to the estate to pay estate obligations.

The surviving spouse or other dependent family members may apply to the Probate Court for a support allowance from the estate funds during the period of settlement of the estate. The fiduciary must sign the Application and Decree for Support Allowance, PC-202, indicating that she has no objection.

The surviving spouse or family of the decedent may be allowed to use the decedent's automobile while the estate is being settled, provided the decedent maintained the automobile as a family car. Permission to use the vehicle can generally be obtained from the Court by simply writing or calling the Court. The fiduciary need not register the automobile until the expiration of the registration that was in force at the time of the decedent's death. (Note: Under the provisions of C.G.S. §14-16 as amended by Public Act 02-105, the owner of a motor vehicle can designate a beneficiary on the registration certificate in writing. In order to obtain ownership of the vehicle after the owner's death, the beneficiary must make application to the Department of Motor Vehicles within 60 days of the date of death.)

STEP 6: FOLLOW STATUTORY PROCEDURES FOR THE PAYMENT OF CLAIMS AGAINST THE ESTATE, AND FILE RETURN OF CLAIMS AND LIST OF NOTIFIED CREDITORS, PC-237, AT REQUIRED TIME.

The statutes relating to payment of claims against estates of decedents dying are summarized in this section.

Within 14 days after the first fiduciary's appointment, a newspaper notice will be placed by the Probate Court notifying the estate's creditors of the decedent's death, the creditor's obligation to present claims promptly, the fiduciary's name, and the address where claims are to be presented. "Claims" include all debts incurred by the decedent prior to his death. The statutes provide that the fiduciary may send certified mail notice to creditors informing them that claims must be presented to the fiduciary within 90 days of the date of the notice, but the fiduciary is under no obligation to send notice to creditors. Creditors who do not receive certified notice have 150 days to present their claims to the fiduciary. The statutes permit creditors to ask the Probate Court for an extension of time to present claims in appropriate circumstances.

It is the responsibility of the fiduciary to determine the validity of any claim and notify the creditor of any claims he feels are not proper, in whole or in part. If there is doubt regarding the validity of a claim, Court assistance should be sought. One hundred and fifty days after the appointment of the fiduciary, a good faith fiduciary who has distributed estate assets will not be liable to the creditors of the estate. Beneficiaries may be

liable for legitimate claims properly brought after final distribution of all those assets known to the fiduciary. Within 60 days after the 150 day period, the fiduciary must file with the Court a Return of Claims and List of Notified Creditors, PC-237, sworn to by the fiduciary.

Any expenses related to the decedent's death and the settlement of the estate are known as "administration expenses." They include the funeral expenses, statutory probate court charges, legal fees, the fiduciary's fees, the cost of legal notices, and any expenses related to maintenance of the decedent's property incurred after the decedent's death. Certain expenses may take precedence over the claims of general creditors incurred before the decedent's death. Therefore, no claims from any creditor may be paid until it is determined that the assets of the estate are sufficient to cover the preferred expenses (taxes, funeral bills, expenses of last illness, etc.) and all claims of creditors. If the assets of the estate are not sufficient to cover the funeral expenses and expenses of the last illness of a married person, his spouse may be responsible for the payment of these expenses.

If the assets of the estate are not adequate to pay the debts, the estate may be settled as insolvent. The determination of whether an estate is insolvent will be made at a hearing held by the Probate Court following notice arranged by the fiduciary at the Court's direction. The procedure for settling an insolvent estate is substantially different from that for a solvent estate, and competent legal advice should be obtained.

STEP 7: FILE TAX RETURNS (S-1 OR S-2) AND PAY TAXES DUE WITHIN SIX MONTHS OF DECEDENT'S DEATH.

The fiduciary must file the original and one copy of the State of Connecticut Succession Tax Return (S-1 or S-2) in the probate court within 6 months of the decedent's death. The Court will certify and forward the original to the Department of Revenue Services. The form is to be filed with the Court, but any tax due must be sent by the fiduciary directly to the Department of Revenue Services with a cover letter referencing the name of the estate. The succession tax is due 6 months from the date of death, and interest and penalties will accrue from that date. The Department of Revenue Services will review the S-1 or S-2 and issue the fiduciary either a "Succession Tax Assessment" for estates that have taxes due or a "Certificate of No Tax" for those not owing further taxes. They will do this within 120 days of receipt of the S-1 or S-2. Forms S-1 or S-2 with instructions for completion are available at the probate court. Any further inquiries concerning succession taxes should be directed to the Department of Revenue Services, 25 Sigourney St., Hartford, CT 06106.

The filing of a U.S. Treasury Department Federal Estate Tax Return (Form 706) may be required if the total value of the estate's assets exceeds a certain amount, as specified in the Internal Revenue Code. To obtain the most current information concerning the Federal Estate Tax, the fiduciary should contact the Internal Revenue Service.

Some estates may be subject to payment of a Connecticut Estate Tax and an Estate Income Tax. The Connecticut Estate Tax is a transfer tax that absorbs the credit allowable for state death taxes on the federal form 706, thereby shifting a portion of the federal estate tax to Connecticut by picking up the credit allowed for state death taxes under the Internal Revenue Code. Whenever an estate is required to file the federal form 706, the estate must file form CT-706 and pay the applicable Connecticut Estate Tax.

It is the fiduciary's responsibility to file both a federal and Connecticut Individual Income Tax Return (federal form 1040 and CT-1040) for the decedent for the tax year in which the decedent died and to pay any income tax that may be due. The fiduciary should determine whether a federal tax identification number is required for the estate. The fiduciary may also be required to file a Fiduciary Income Tax form (federal form 1041). If form 1041 must be filed, the fiduciary may be required to file form CT-1041, Connecticut Income Tax Return for Trusts and Estates. Please contact the Department of Revenue Services for further information.

STEP 8: FILE FINAL ACCOUNT, USUALLY WITHIN TWELVE MONTHS OF DEATH OF DECEDENT.

Except under certain circumstances described in the next paragraph, the fiduciary must file a final account, called an Administration Account, PC-241 or PC-242, or other form acceptable to the Court, when all debts, expenses, and taxes have been paid. Usually this is done within 12 months of the death of the decedent. This account informs the Court and the beneficiaries of all property and income received and all expenses paid during the settlement of the estate. The balance of receipts over expenses will be the amount remaining for distribution. The Probate Court will hold a hearing on the account to allow the beneficiaries or any other interested party to ask questions about or object to the proposed distribution or the manner in which estate funds were used. **If all parties interested in the estate** sign an Acceptance and Waiver Re: Final Account, PC-245, indicating that they have received and reviewed a copy of the final account and waive their right to a hearing, the Court may waive the formal hearing and act on the account without the parties having to appear.

The filing of an administration account may not be necessary if: a) no beneficiary is a trustee of a testamentary or intervivos trust, b) the fiduciary or fiduciaries are the sole beneficiary(ies) of the residue of the estate, **and** c) if all other dispositions to other beneficiaries are specific bequests or devises. The fiduciary may then file a Statement in Lieu of Account, PC-243, in which the fiduciary does the following: a) states under oath that all debts, funeral expenses, taxes, and expenses of administration have been paid; b) lists the total of any amount reported on the return of claims filed; c) lists the total amount inventoried in the estate; d) indicates that specific bequests have been or will be paid in full; e) states that all distributees have received a copy of the statement in lieu of account; and f) itemizes all funeral expenses, taxes, and expenses of administration. **If all parties interested in the estate** sign an Acceptance and Waiver Re: Statement in Lieu of Account, PC-244, indicating that they have received and reviewed a copy of the Statement in Lieu of Account and waive their right to a hearing, this statement may be sufficient for the Court to discharge the fiduciary from further responsibility and notify the surety company to terminate the probate bond. The Court may then waive a formal hearing and act on the account without the parties having to appear.

STEP 9: DISTRIBUTE ASSETS TO BENEFICIARIES.

When the final account has been approved, the Court will order the fiduciary to distribute the assets of the estate. The fiduciary then distributes the property to the beneficiaries according to the approved distribution.

STEP 10: FILE CLOSING STATEMENT, PC-213.

For all practical purposes, the fiduciary's final act as fiduciary is the filing of an affidavit of closing with the Court. If a probate bond has been required, the Court will send the surety company a certificate stating that the fiduciary has complied with all orders of the Court relating to the settlement of the estate and terminating the probate bond.

APPEALS FROM PROBATE — C.G.S. §§45a -186 — 193

Any person aggrieved by an order, denial, or decree of the probate court may appeal to the Superior Court. In general, appeals must be taken within 30 days of the date of the order, denial, or decree.